

Memorandum

105.0064

To: Petition Unit (HKL)

January 13, 1981

From: Tax Counsel (RHA)

Subject: G--- W. B---

SP -- XX XXXXXX-010

This matter was heard by the Board in San Diego on December 2, 1980, at which time it was taken under consideration.

Following is a suggested statement of Board action:

Statement of Board Action

The Board finds that petitioner purchased a helicopter and leased it back to a person holding a Part 135 air tax operator's certificate issued by the Federal Aviation Administration.

The Board finds that petitioner's lessee used the helicopter principally in its work for the N--- B--- Company under a contract with that company.

The Board finds that petitioner's lessee was required to hold a part 135 operating certificate in its conduct of business with N---.

The Board concluded that contract carriage of persons or property does not qualify the lessee's use as a common carrier or persons or property as required for the exemption under Section 6366.1 of the Sales and Use Tax Law.

The Board ordered the matter redetermined without adjustment.

RHA:ss

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

In the Matter of the Petition)	
for Redetermination of State of California)	DECISION AND RECOMMENDATION
and Local Use Tax;)	
)	
G--- W. B---)	No. SP -- XX XXXXXX-010
)	
)	
_____Petitioner.)	

The above-entitled matter came on regularly for hearing on Wednesday, April 23, 1980 in Santa Ana, California, before Robert H. Anderson, Hearing Officer.

Appearing for Petitioner:

Mr. G--- W. B---

Appearing for the Board

Mr. G. N. Highland
Field Audit Supervisor
Orange County District

Protest

Mr. B--- protests the assessment for use tax on an aircraft purchased for \$100,000. A determination for the tax was issued on October 29, 1979.

Contentions

1. The aircraft is under lease to a F.A.R. part 135 (air taxi) operator and is exempt from the use tax.
2. California Sales and Use Tax Annotation 105.0060 classifies the lessee as a common carrier under Sections 6366 and 6366.1 of the Rev. & Tax. Code. Lessee is a common carrier.

Summary

Mr. B--- purchased the aircraft in question, a helicopter, from the party to whom it is presently leased as an investment, to get an investment tax credit among other things. He never flew it himself.

The former owner and current lessee holds an air taxi certificate and had purchased the helicopter tax paid. The tax, however, was refunded on the ground that the former owner was operating the helicopter as a common carrier. The former owner of this helicopter also purchased another aircraft and on the second one paid no sales tax for the same reason that the tax was refunded on the first one purchased. The operational use of the helicopter remained unchanged; it was the same before the sale as after the sale to Mr. B---.

The lessee of the helicopter is A--- V--- S--- Corp., who is engaged in the business of transporting personnel/guests of N---.

The use of the helicopter, as shown on the insurance policy, is "Air Taxi Commercial Exclusively in the Business of N---.

In order for the lessee to operate the helicopter in the business, the lessee has to be an air taxi operator licensed with the Federal Aviation Administration, and the operator of the helicopter is so licensed. A copy of the operating certificate was submitted and is in the petition file.

The claim for exemption from use tax was based on the conclusion that the common carrier use was exclusively with N--- who had a contract with the lessee to supply the common carrier service to it exclusively, and thus, the use was deemed not furnishing any air transportation to the public.

The foregoing conclusion was based on the language in the annotation numbered 105.0060 which reads:

"105.0060 Common Carrier. A company operating under an "air taxi/commercial operator" certificate issued by the Federal Aviation Administration, providing air transportation to the public in an aircraft under control of the company's pilot at a rate based on mileage plus standby and other charges, on a nonscheduled basis, is a common carrier within the meaning of Sections 6366 and 6366.1."

Conclusion

In order to qualify for the exemption under Section 6366.1 of the Sales and Use Tax Law, the aircraft must be used as a common carrier of persons or property.

The fact that the lessor holds an air taxi operating certificate is acceptable evidence that it is qualified to engage in common carriage operations. However, the evidence at hand indicates that it was not used in common carrier operations, even though an air taxi operating certificate may have been required for the use to which the lessee made of the helicopter.

The common carrier concept is clear in principle, as stated in Civil Code Section 2168 "...Every one who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry."

The helicopter in question was dedicated to use as "air taxi commercial exclusively in the business of N---" according to the insurance policy covering its operations.

Accordingly, the helicopter could not have been available "to the public" for carriage of persons or property. The evidence at hand does not indicate that the helicopter was used as a common carrier of persons or property as required under Section 6366.1 of the law.

Recommendation

Redetermine without adjustment.

Robert H. Anderson, Hearing Officer

AUG 19, 1980

Date